

New Hampshire Council on Resources and Development

Office of Energy and Planning
57 Regional Drive, Concord, NH 03301
Voice: 603-271-2155 | Fax: 603-271-2615



TDD Access: Relay NH
1-800-735-2964

MEMORANDUM

TO: CORD Members and Other Interested Parties

J. D. Colcord, Chairman
Merrimack County Board of Commissioners
4 Court Street
Concord, NH 03301

Donald S. Clarke, Chairman
Sullivan County Board of Commissioners
14 Main Street
Newport, NH 03773

Tara E. Bamford, Executive Director
Upper Valley Lake Sunapee RPC
30 Bank Street
Lebanon, NH 03766-1759

James Powell, Chair
Newbury Board of Selectmen
P.O. Box 296
Newbury, NH 03255

James Carrick, Chair
Goshen Board of Selectmen
P.O. Box 68
Goshen, NH 03752

FROM: Jennifer Czysz, Senior Planner

DATE: November 15, 2006

SUBJECT: *State Owned Land, Surplus Land Review, Towns of Newbury and Goshen
SLR 06-011 : Request to enter into a 20-year lease with the New England Handicapped
Sports Association at Mount Sunapee State Park.*

RESPONSE DATE: December 18, 2006

Please review the attached information to determine if your agency has any interest in this transaction. If there is an interest, please notify this office of your intent in writing by the response date indicated above. The Council on Resources and Development will consider the request at its next meeting. If the comment period has not closed by the date of the next meeting, any actions by CORD will be subject to completion of the comment period with no adverse comments received.

The Department of Cultural Resources is asked to review this request in accordance with RSA 227-C:9.

Members of the Public Water Access Advisory Board are asked to review this request in accordance with RSA 233-A.

The Lakes Management and Protection Program, through the Lakes Coordinator, is asked to review this request in accordance with RSA 483-A:5, II.

The Rivers Management and Protection Program, through the Rivers Coordinator, is asked to review this request in accordance with RSA 483:8, VI and 14.

MEMBER AGENCIES: Office of Energy and Planning • Resources and Economic Development • Environmental Services
Agriculture, Markets, and Food • Fish and Game • Safety • Emergency Management • Health and Human Services • Education • Transportation
Cultural Resources • Administrative Services • New Hampshire Housing Finance Authority

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

FROM: George M. Bald
Commissioner
Dept. of Resources & Economic Development

DATE: November 7, 2006

SUBJECT: **20 Year Lease at Mount Sunapee State Park in Newbury/Goshen**

TO: Amy Ignatius, Chairman
Council on Resources and Development

REQUESTED ACTION:

Pursuant to RSA 4:40, and RSA 216-A:3, endorsement is respectfully requested for the Department of Resources and Economic Development (DRED) to enter into a twenty (20) year, renewable for two (2) additional ten (10) year terms, Lease Agreement with the New England Handicapped Sports Association (NEHSA) at Mount Sunapee State Park in the towns of Newbury and Goshen, NH.

EXPLANATION:

DRED has a long-standing and valued partnership with NEHSA and supports its mission to encourage positive attitudes, social opportunities and personal growth for individuals with disabilities through the participation in outdoor sports and recreation. Since 1972, NEHSA has offered adaptive alpine ski programs to people with physical and developmental disabilities from a ski hut facility it built, maintains and operates on state-owned land known as Mount Sunapee State Park (the Property). NEHSA will continue to operate out of the existing facility, but proposes to relocate and construct a larger, more adaptive facility closer to the beginner ski trails. This lease agreement will allow NEHSA to continue operations in the existing facility and will cover its transition into the new facility. Due to the continuous and large capital investment being made by NEHSA, and their outstanding performance over time as a dependable, well-run organization that serves an important and underserved segment of the public, DRED wishes to enter into a long-term Lease with them.

Please screen this request through the New Hampshire Council on Resources and Development. If you should have any questions, please contact Bill Carpenter at 271-2214.

Thank you.

GMB/BC/ttl
Attachments

Council on Resources and Development

REQUEST FOR SURPLUS LAND REVIEW ACTION

Name of Agency Requesting Action: Department of Resources and Economic Development

Location of Property: Mount Sunapee State Park

Acreage: 2,893-acre state reservation

Tax Map/Lot #: unknown

Requested Action: Enter into a 20-year Lease, with two additional 10-year extensions at DRED's discretion

Agency Contact Person: Bill Carpenter at 271-2214, ext. 318

Please provide the following information, if known, about the property. Attach map(s) showing the location of the property.

1. What is the current use for this property? : Recreation, including a ski area, camping and beach facilities, and forestry.

2. What is the proposed use of this property?: No change.

3. Are there any structures located on this property? If so, how many and what kind? :
Yes, ski facilities - 42 structures; campground - 16 structures; and beach facilities - 5 structures; and misc. – 5 structures.

4. Are there any water resources related to this property? If so, please indicate the size or extent of such resources. : Yes, Lake Sunapee (acreage?).

5. Please list any other significant resources known to be located on this property.

Part of the Pillsbury-Sunapee Highlands, a span of unbroken forest land. NEHSA will continue to operate within the designated ski area.

6. Was this property purchased with federal highway funds? Yes ___ No X

7. Is access to this property available? Yes X No ___

8. Request has been cleared for Historic Resources? Yes ___ No X

No change in location, however, DHR review will be initiated when the new site has been identified.



STATE of NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
DIVISION of PARKS and RECREATION



FACILITY USE LEASE AGREEMENT

In accordance with RSA 227-H:9 and 4:40, the Department of Resources and Economic Development, Division of Parks and Recreation, herein after called the Lessor, and the New England Handicapped Sports Association (NEHSA), a 501(c)3 organization hereinafter called the Lessee, whose principal address is PO Box 2135, Newbury, NH 03255, mutually agree to enter into a Lease Agreement for the facility known as the Handicapped Sports Building located at Mount Sunapee State Park under the following conditions.

PURPOSE: To lease the facility and property on which the Handicapped Sports Building, built by NEHSA, exists at Mount Sunapee State Park for the purpose of fulfilling NEHSA's goals to encourage positive attitudes, social opportunities and personal growth for individuals with disabilities through the challenges that participation in outdoor sports and recreation offers.

1. **ASSIGNMENT:** This Agreement shall not be transferred, in whole or in part, to any other party unless approved in writing by the Lessor. This Agreement shall be in concurrence with, but independent of, the Lease and Operating Agreement between the State and Okemo Mountain, Inc. or its assigns.
2. **TERM:** The term of this Agreement shall be twenty (20) years commencing upon the date of approval by the Long Range Capital Planning and Utilization Committee, the Council on Resources and Development, and Governor and Executive Council, unless terminated earlier as hereinafter provided. The Lessee shall have the option of extending the term for two (2) additional ten (10) year periods. Requests for extension must be submitted in writing to the Department of Resources and Economic Development no later than six (6) months prior to expiration.
3. **CONSIDERATION:** Pursuant to RSA 4:40 III-a, the fee for this Agreement shall be one thousand one hundred dollars (\$1,100) for the term of this Agreement.
4. **PUBLIC USE OF THE LEASE PREMISES and LWCF:** The Lessee shall allow public access to the leased premises for recreational and park activities, as required under the federal Land and Water Conservation Fund (LWCF) program with which Mount Sunapee State Park was developed.
5. **MAINTENANCE OF FACILITY:** The Lessee shall be fully and solely responsible for all costs of maintenance of the facility, its equipment and associated grounds. Building, sanitation, housekeeping and grounds maintenance shall have the objective of continuing the facility in as good a condition as of the effective date of this Agreement, recognizing normal wear and tear. The Lessee shall promptly report any and all damage to the premises occasioned by storm, accident or other such events.
6. **UTILITIES:** The Lessee shall be responsible for the costs of all utilities necessary for the proper operation of the facility. Failure by the Lessee to pay for any utility services purchased, resulting in the termination of the services by the provider, may be considered a material breach of this Agreement.
7. **BUILDINGS, EQUIPMENT AND LOCATIONS:** The Lessee shall provide for its use such buildings, shelters, rooms, built-in equipment, and locations as now exist for the purpose of providing the services herein specified. In the event the Lessor requires removal or relocation of these premises, expenses

associated with such removal or relocation shall be at the sole expense of the Lessee with the written approval of the Lessor.

8. **PURCHASE OF EQUIPMENT:** In the event that equipment is installed on State property by the Lessee for purposes of carrying out this Agreement it shall be subject to approval by the Lessor. Invoice cost if new, or depreciation cost if used, shall be filed with the Lessor.

In the event of cancellation of this Agreement by the Lessor, it may offer to purchase equipment installed on State property, subject to the availability of funds, on basis of cost as submitted to the Lessor at time of installation less depreciation figured by straight line depreciation method from the date of installation to date six months after cancellation notice. The Lessor shall have the right to assign the State's obligation to purchase to other parties for the purpose of maintaining uninterrupted service to the public. The Lessee shall have the right to remove within 30 days after termination of this Agreement, at its sole cost and without damage to State property, any equipment it installed on State property while under this Agreement.

9. **SITE IMPROVEMENTS, COMPLIANCE, AND TITLE:** The Lessee shall submit all plans and specifications for site and facility improvements to the Lessor for approval at least ninety (90) days before the proposed construction date. The Lessee shall bear the cost of all improvements and renovations and shall ensure that such work is done in a good and workmanlike manner and in compliance with all applicable laws, regulations and building codes.

Federal LWCF and Historic Preservation Compliance. The State agrees to facilitate the necessary review process under Section 6(f) of the Land and Water Conservation Fund program and Section 106 of the National Historic Preservation Act. The Lessee accepts that applicable regulatory approvals must be obtained by the State prior to the start of any work on Park lands or facilities and shall bear the cost of the review requirements, as necessary.

Site and facility improvements built or installed by the Lessee shall remain the real or personal property of the Lessee during the term of this Agreement. Title to all site and facility improvements shall vest in the Lessor upon the termination of this Agreement.

10. **CASUALTY ADJUSTMENT:** In the event the premises or any part thereof shall be destroyed by fire or unavoidable casualty so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, that portion of the Lessee's operation shall be suspended until said premises shall have been placed in proper condition for use of the Lessee, by the Lessee.
11. **RIGHT TO INSPECT:** The Lessee shall allow the Lessor, or such persons as may be designated, access to the premises at all reasonable hours, with reasonable notice, for the purpose of examining and inspecting said premises, to insure compliance with statutes, ordinances and regulations within this Agreement, or for any other purpose not unduly affecting the operation of the Lessee's business.
12. **SIGNS:** All signs and on-site advertising matters must be in good taste and acceptable to the Lessor. All advertising shall credit the NH Division of Parks and Recreation as a supporter of the Lessee.
13. **HOURS OF OPERATION:** Days and regular hours of operation shall be provided to and approved by the Lessor at least ninety (90) days prior to the start of each operating season.

- 14. RATE SCHEDULE:** All rates and prices charged by the Lessee for its programs, ski lift tickets, admission fees or other fees to be paid by members of the general public shall be submitted to the Lessor for its review and approval. All rates and prices charged by the Lessee shall be competitive with similarly operated facilities, and in accordance with the mission of the Lessee. The Lessor's approval shall be automatic unless the Lessor makes a determination that the rates are not competitive and so notifies the Lessee.
- 15. REPORTS:** The Lessee shall, at the close of its fiscal year, submit a copy of its year-end financial report, such as its Profit-Loss Statement. The Lessee shall provide the Lessor with a copy of its papers of 501(c)(3) status, list of officers, by-laws, and insurance certificate, as amended.
- 16. MEETING:** Meetings shall be held when deemed necessary by the Lessor or Lessee at a place and time to be mutually agreed upon for the purpose of discussing long-term operational problems, presentation of official requests for changes or policies, and other pertinent business which may arise. The parties expressly agree that the Commissioner shall make no finding of "poor performance", a term used in the Section entitled "Termination" herein, without first advising the Lessee in writing of the basis for such a finding and convening a meeting pursuant to this paragraph for the purpose of allowing the Lessee to respond.
- 17. CONFLICT RESOLUTION:** The decision of the Lessor relative to proper performance of the terms of the Agreement shall be final and conclusive on the parties hereto, and shall be final and conclusive as to each matter not covered in the Agreement and specifications that may arise in connection with the privileges granted, and also as to each matter which is not clearly covered herein. The Lessor shall meet with the Lessee as provided herein whenever a decision is necessary, in an attempt to reach a mutually agreed upon decision.
- 18. CONFLICT OF INTEREST:** No officer, member or employee of the Lessee, and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Services are to be performed, who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of such Services, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association on which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. No member of or delegate to the Congress of, officer of, or employee of the United States of America shall be admitted to any share or part hereof or to any benefit arising here from. Under no circumstances shall the Lessee employ an employee of the State of New Hampshire.
- 19. COMPLIANCE WITH LAWS AND REGULATIONS – EQUAL OPPORTUNITY:** The Lessee shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Lessee, including but not limited to civil rights and equal opportunity laws. The Lessee shall also comply with the regulations of the Department of Resources and Economic Development. The Lessee shall procure at its expense all necessary licenses and permits required in connection with the operations described herein.

During the term of this Agreement, the Lessee shall not discriminate against members of the public, employees or applicants for employment because of race, color, religion, creed, age, sex, disability or national origin and will take affirmative action to prevent such discrimination. The Lessee shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 CFR Part 60), and with

any rules, regulations and guidelines as the State of New Hampshire issues to implement these regulations.

20. PERSONNEL: The Lessee shall, at its own expense and at all times, provide all personnel necessary to perform the services. The Lessee warrants that all personnel engaged in the services shall be qualified to perform the services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

21. TERMINATION:

- a. This Agreement shall be subject to cancellation by the Lessee, regardless of grounds therefore, by giving the Lessor sixty (60) days written notice of cancellation.
- b. This Agreement shall be subject to cancellation by the Lessor, in the event of the failure of the Lessee to perform, keep and observe any of the conditions of the Agreement and the failure of the Lessee to correct the default or breach within a time specified by the Commissioner, by giving the Lessee thirty (30) days written notice of cancellation.

22. RELATION TO THE STATE: In the performance of this Agreement, the Lessee is in all respects an independent contractor and is neither an agent nor employee of the State. Neither the Lessee nor any of its officers, employees, agents, or members shall have authority to bind the State, or receive any benefits, workers' compensation or emoluments provided by the State to its employees.

23. INDEMNIFICATION: The Lessee shall defend, indemnify, and hold harmless the State, and its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Lessee or its subcontractors, agents or assignees. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

24. INSURANCE: The Lessee shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, both for the benefit of the State, the following insurance:

- a. Comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than one million dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) per incident.
- b. Fire and extended coverage insurance covering the leased premises in an amount of not less than eighty percent (80%) of the whole replacement value of the property.
- c. Workers' Compensation insurance as required by the New Hampshire Department of Labor.

All insurance shall be in the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by the State. The Lessee shall deposit with the Lessor certificates

of such insurance. Failure to comply may cause a delay in opening for business on schedule and shall be considered a material breach of this Agreement.

- 25. WAIVER OF BREACH:** No failure by the Lessor to enforce any provisions hereof after any event of default on the part of the Lessee shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of default shall be deemed a waiver of the right of the Lessor to enforce each and all of the provisions hereof upon any further or other default on the part of the Lessee.
- 26. AMENDMENT:** This Agreement may be mutually amended only by an instrument in writing signed by the parties, and only after approval of such amendment by the Commissioner and the Governor and Executive Council.
- 27. CONSTRUCTION OF AGREEMENT AND TERMS:** This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
- 28. THIRD PARTIES:** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.
- 29. ENTIRE AGREEMENT:** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement upon approval of the Governor and Executive Council.

NEW ENGLAND HANDICAPPED SPORTS ASSOCIATION

Witness

Louis Pieroni, President
NEHSA

Date

**STATE of NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT**

Witness

Allison A. McLean, Director
Division of Parks and Recreation

Date

Witness

George M. Bald, Commissioner
Dept of Resources and Economic Development

Approved to Form, Substance, and Execution,

Attorney General's Office, NH Department of Justice

Governor and Executive Council Approved: Date _____ Item # _____

AAM/ttl

DRED-DIV PARKS & REC MT SUNAPEE - NEHSA LEASE

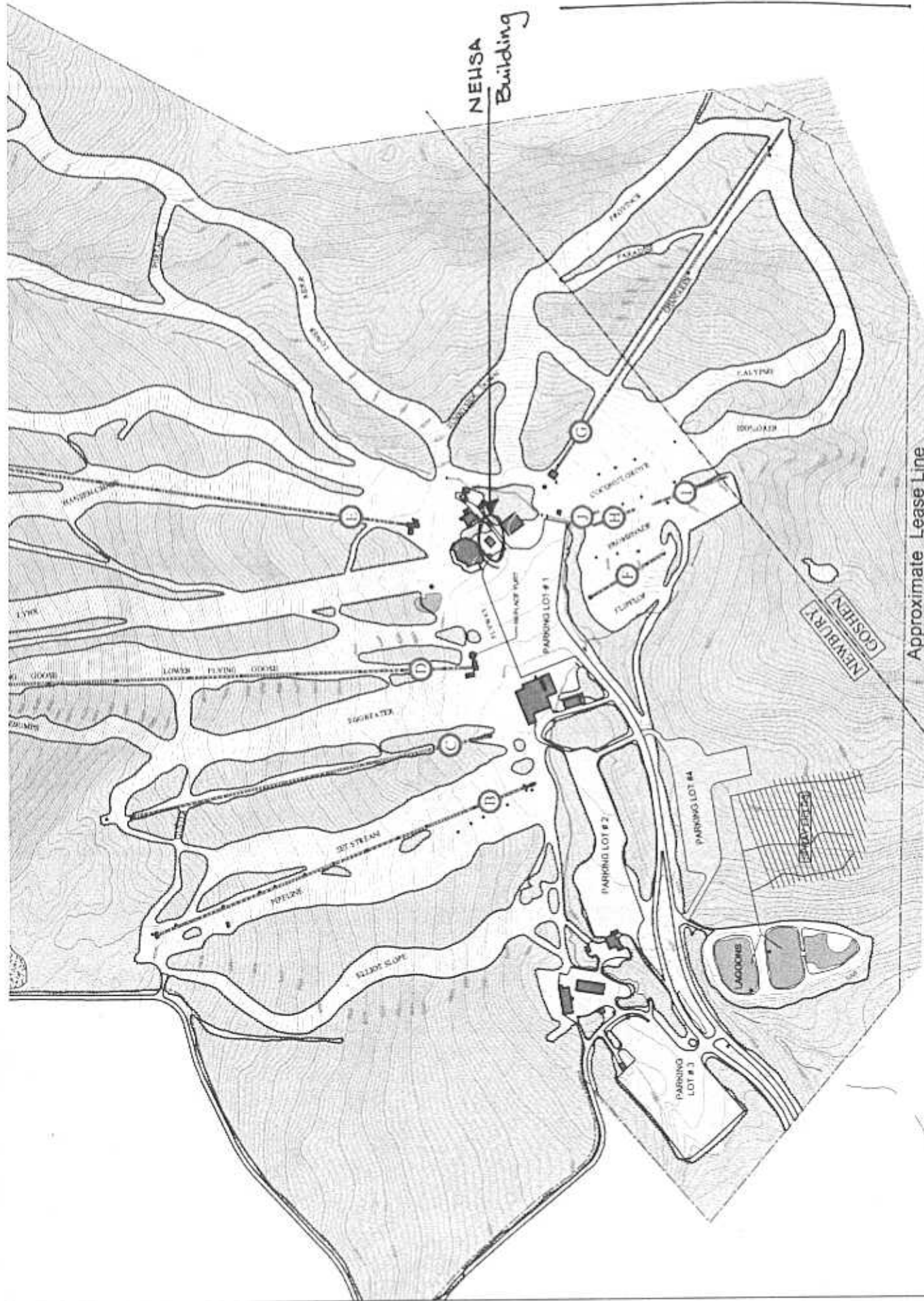
NEHSA
Building

Approximate Lease Line



MOUNT
SUNAPEE
RECREATION AREA
IMPROVEMENTS PLAN 2004
March 9, 2004

AOP2004



- | | | |
|--------------------|---------------------|-------------------|
| EXISTING BUILDINGS | EXISTING VEGETATION | PROPOSED PARKING |
| EXISTING BLANKS | EXISTING LOTS | PROPOSED SWIMMING |
| EXISTING POND | APPROVED TRAIL # | TRAIL EXPANSION |
| EXISTING WATER | | |
- MOUNT SUNAPEE RESORT
 DUTCHMAN HENRY, INC.
 HILLING ASSOCIATES
 ENGINEERING
 PRINCE ENVIRONMENTAL ASSOCIATES
 DUTCHMAN HENRY & ASSOCIATES, INC.
 WATER WATER ENGINEERING